

## CHARTER

### NEGOTIATED RULEMAKING COMMITTEE ON THE SHARED RISK EXCEPTION

#### PURPOSE

The purpose of the Negotiated Rulemaking Committee on the Shared Risk Exception is to provide advice and make recommendations to the Secretary of Health and Human Services with respect to the text or content of an interim final rule that will establish standards relating to the exception to the anti-kickback statute for risk-sharing arrangements, set forth in section 1128B(b)(3)(F) of the Social Security Act. The exception was enacted by section 216 of Public Law 104-191, the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 216 of HIPAA provides that the Secretary will promulgate regulations that establish standards for the exception using an expedited negotiated rulemaking process.

#### AUTHORITY

Public Law 104-191, section 216, in accordance with 5 U.S.C. 561-569, the Negotiated Rulemaking Act. The committee is governed by the provisions of Public Law 92-463, as amended (5 U.S.C. App.2), which sets forth standards for formation and use of advisory committees.

#### FUNCTIONS

The Negotiated Rulemaking Committee on the Shared Risk Exception will, with the assistance of an impartial facilitator, attempt to reach consensus on the text or content of an interim final rule on standards relating to the exception for risk-sharing arrangements. Consensus is defined as unanimous concurrence, unless the committee agrees to a different definition. If the committee reaches consensus on part or all of an interim final rule, the committee will recommend, through the Office of Inspector General (OIG), that the Secretary adopt the committee's consensus when publishing the interim final rule in the Federal Register. The committee may also recommend specific changes in the interim final rule in response to comments.

#### STRUCTURE

The committee will be limited to 25 members, unless it is determined that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership. The committee will include one person representing the OIG. An impartial facilitator, approved by the committee, will act as chair.

Members will be invited to serve for the duration of the committee.

Subcommittees composed of members of the parent committee may be established to perform

specific functions within the committee's jurisdiction. The Department Committee Management Officer will be notified upon establishment of each subcommittee, and will be provided information on its name, membership, function and estimated frequency of meetings.

### MEETINGS

Meetings will be held according to a schedule agreed upon by the committee. A Government official will be present at all meetings.

Meetings will be open to the public, except as determined by the Secretary or other official to whom the authority has been delegated. Notice of all meetings will be given to the public.

Meetings will be conducted, and records of the proceedings kept, as required by applicable laws and departmental regulations.

### COMPENSATION

Members of the committee who are not full-time Federal employees will be responsible for their own expenses for participating in the committee, except for members who have certified a lack of adequate financial resources to participate and whose participation the OIG has determined is necessary to assure adequate representation of the member's interest. Such members may be paid at the established per diem rate, plus travel expenses, in accordance with standard Government travel regulations.

### ANNUAL COST ESTIMATE

The estimated annual cost for operating the committee, including compensation and travel expenses for certain members, but excluding staff support, is \$ 36,100.

The estimate of person-years of staff support is 1.5 years, at an estimated annual cost of \$ 121,650.

### REPORTS

In the event a portion of a meeting is closed to the public, a report will be prepared and will contain, at a minimum: (1) a list of members and their business addresses, (2) a statement of the committee's functions, (3) the dates and places of such meetings, and (4) a summary of committee activities and recommendations made during the closed portions. A copy of the report will be provided to the Department Committee Management Officer.

### TERMINATION DATE

The Negotiated Rulemaking Committee on the Shared Risk Exception will terminate upon promulgation of final rulemaking or at an earlier date specified by the OIG, after consulting with the committee, or by the committee itself.

APPROVED:

May 19, 1997

/s/

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Date

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Secretary